

STATE OF MICHIGAN
BEFORE THE JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST:

HON. DANA FORTINBERRY
Judge, 52nd District Court
Clarkston, MI 48346

FORMAL COMPLAINT NO. 78

COMPLAINT

The Michigan Judicial Tenure Commission (“Commission”) files this complaint against Hon. Dana Fortinberry, 52nd District Court Judge, serving the City of Clarkston, Oakland County, Michigan. This action is taken pursuant to the authority of the Commission under Article 6, Section 30 of the Michigan Constitution of 1963, as amended and MCR 9.200 *et seq.* The filing of this Complaint has been authorized and directed by resolution of the Commission.

Respondent is, and at all material times was, a judge of the 52nd District Court in Clarkston, Michigan. As a judge, she is subject to all the duties and responsibilities imposed on her by the Michigan Supreme Court, and is subject to the standards for discipline set forth in MCR 9.104 and MCR 9.205. Respondent is charged with violating her judicial and professional duties as set forth in the following paragraphs.

1. Respondent at all relevant times was a judge of the 52nd District Court, City of Clarkston, Oakland County, Michigan.

2. Kelly Kostin (*née* Ott), an attorney and former magistrate in the 52nd District Court, was a candidate for an open seat on the 52nd District Court in the 2004 primary election.

3. Robert Kostin, a local attorney, is Kelley Kostin's husband, and was married to Judie Kostin until 1989, when Judie committed suicide at their home in White Lake Township.

4. Colleen Murphy, who in 2004 was a magistrate in the 52nd District Court, was also a candidate in the 2004 primary election, and was supported by Respondent.

COUNT I

MISPRESENTATIONS IN JULY 2004 LETTER

5. On July 20, 2004, Respondent sent a five-page letter to Dave Curtis, Vice President of the Oakland County Deputy Sheriff's Association (the "Association").

6. The letter concerned the Association's endorsement of Kelley Kostin in the judicial primary for the 52nd District Court.

7. Respondent alleged in the letter that Judie Kostin's death was not a suicide, and was in fact a murder that involved a cover-up by Robert Kostin, Kelley Ott Kostin, and local police officials.

8. Respondent made several representations as "facts" in that letter, as follows:

- a. Kelly Ott (who in 1989 was a law clerk in Oakland County Circuit Court) had a sexual affair with Robert Kostin in 1989, when he was married to another woman (who was Judie Kostin);
- b. Judie Kostin found out about the affair shortly before she was found dead in her home;
- c. The circumstances of the death launched a police investigation, which was conducted "quietly" as the White Lake Township Police Chief, Ron Stephens, was a neighbor and friend of Grievant;
- d. After the police investigation was inconclusive and the case was closed as a suicide, Chief Stephens sealed the records regarding the investigation and they remained sealed to the day Respondent issued the letter; and
- e. Kelly Ott moved into Bob Kostin's house less than a month after his wife's death.

9. Respondent failed to take any action to verify those representations when she learned of them between 1989 and 1996.

10. Respondent failed to take any action to verify those presentations before publishing them in her July 20, 2004, letter.

11. Respondent further knew that the police investigation had determined the death was a suicide, and she had no first-hand knowledge that the investigation had reached an incorrect conclusion.

12. Respondent's statement that Chief Stephens and Bob Kostin were friends and neighbors was inaccurate, and Respondent made the statement in disregard of the truth.

13. Respondent's statement that the White Lake Township police file concerning the investigation into the death of Judie Kostin was sealed was inaccurate, and Respondent made the statement in disregard of the truth.

14. Respondent represented in her letter that the unverified “facts” raised questions regarding the moral fiber of Mr. Kostin and Kelley Ott Kostin, which implies that Respondent believed either or both were involved in the death of Judie Kostin.

15. The conduct described in Paragraphs 5 through 14, if true, constitutes:

- (a) Misconduct in office, as defined by the Michigan Constitution of 1963, as amended, Article 6, Section 30 and MCR 9.205;
- (b) Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, as amended, Article 6, Section 30, and MCR 9.205;
- (c) Failure to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to the Code of Judicial Conduct, Canon 1;
- (d) Failure to be aware that the judicial system is for the benefit of the litigant and public, and not the judiciary, contrary to the Code of Judicial Conduct, Canon 1;
- (e) Irresponsible or improper conduct which erodes public confidence in the judiciary, in violation of the Code of Judicial Conduct, Canon 2A;
- (f) Conduct involving impropriety and the appearance of impropriety, in violation of the Code of Judicial Conduct, Canon 2A;

- (g) Failure to conduct oneself at all times in a manner which would enhance the public's confidence in the integrity and impartiality of the judiciary, contrary to the Code of Judicial Conduct, Canon 2B;
- (h) Allowing family and social relationships to influence judicial conduct or judgment, in violation of the Code of Judicial Conduct, Canon 2C;
- (i) Failure to maintain the dignity of judicial office during a campaign, contrary to Code of Judicial Conduct, Canon 7B(1)(a);
- (j) Acting with reckless disregard when participating in the use of a public communication that was false, contrary to Code of Judicial Conduct, Canon 7B(1)(d);
- (k) Misuse of judicial office for the advantage and gain of others, in violation of MCR 9.205(B)(1)(e);
- (l) Conduct which is prejudicial to the proper administration of justice, in violation of MCR 9.104(1);
- (m) Conduct which exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2); and
- (n) Conduct which is contrary to justice, ethics, honesty or good morals, in violation of MCR 9.104(3).

COUNT II

MISPRESENTATIONS AT MARCH 2004 POLICE LODGE MEETING

16. On or about March 15, 2004, Respondent attended a meeting of the Metro Pontiac Fraternal Order of Police Lodge # 132 with Colleen Murphy, who was the candidate Respondent was supporting in the 52nd District Court primary.

17. Respondent stated at the event, in the presence of other individuals including Cherie Kelly-Hunter and Marlene Wadsack, that Mr. Kostin had killed his wife (referring to Judie Kostin) and had gotten away with it.

18. Respondent further stated that Kelley Kostin was Mr. Kostin's girlfriend before the death, and Mr. Kostin was getting away with murder.

19. Respondent represented that the police had not conducted a proper investigation into the matter.

20. Respondent made those statements without taking any action to verify the information when she became aware of it between 1989 and 1996, and through the date she made the representations in March 2004.

21. From the time Respondent learned of the information between 1989 and 1996, through the dates she made the representations in March and July, 2004, Respondent failed to report the information to any police, prosecuting, or other law enforcement agency.

22. The conduct described in Paragraphs 16 through 21, if true, constitutes:

- (o) Misconduct in office, as defined by the Michigan Constitution of 1963, as amended, Article 6, Section 30 and MCR 9.205;
- (p) Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, as amended, Article 6, Section 30, and MCR 9.205;
- (q) Failure to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to the Code of Judicial Conduct, Canon 1;
- (r) Failure to be aware that the judicial system is for the benefit of the litigant and public, and not the judiciary, contrary to the Code of Judicial Conduct, Canon 1;
- (s) Irresponsible or improper conduct which erodes public confidence in the judiciary, in violation of the Code of Judicial Conduct, Canon 2A;

- (t) Conduct involving impropriety and the appearance of impropriety, in violation of the Code of Judicial Conduct, Canon 2A;
- (u) Failure to conduct oneself at all times in a manner which would enhance the public's confidence in the integrity and impartiality of the judiciary, contrary to the Code of Judicial Conduct, Canon 2B;
- (v) Allowing family and social relationships to influence judicial conduct or judgment, in violation of the Code of Judicial Conduct, Canon 2C;
- (w) Failure to maintain the dignity of judicial office during a campaign, contrary to Code of Judicial Conduct, Canon 7B(1)(a);
- (x) Acting with reckless disregard when participating in the use of a public communication that was false, contrary to Code of Judicial Conduct, Canon 7B(1)(d);
- (y) Misuse of judicial office for the advantage and gain of others, in violation of MCR 9.205(B)(1)(e);
- (z) Conduct which is prejudicial to the proper administration of justice, in violation of MCR 9.104(1);
- (aa) Conduct which exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2); and
- (bb) Conduct which is contrary to justice, ethics, honesty or good morals, in violation of MCR 9.104(3).

Pursuant to MCR 9.209(B), Respondent is advised that an original verified answer to the foregoing complaint, and nine copies thereof, must be filed with the Commission within 14 days after service upon Respondent of the Complaint. Such answer shall be in a form similar to the answer in a civil action in a circuit court and shall contain a full and fair disclosure of all the facts and circumstances pertaining to Respondent's alleged misconduct. The willful concealment, misrepresentation, or failure to file such answer and disclosure shall be additional grounds for disciplinary action under the complaint.

JUDICIAL TENURE COMMISSION
OF THE STATE OF MICHIGAN
3034 W. Grand Boulevard, Suite 8-450
Detroit, MI 48202

By: _____
Paul J. Fischer (P 35454)
Examiner

Casimir J. Swastek (P 42767)
Associate Examiner

Dated: May 10, 2005

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